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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/538,827	12/12/2005	Gerhard Hauk	70199	5182

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EXAMINER	
VETERE, ROBERT A	

ART UNIT	PAPER NUMBER
1792	

NOTIFICATION DATE	DELIVERY MODE
03/11/2010	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

department-gso.patent@syngenta.com

Office Action Summary	Application No.	Applicant(s)	
	10/538,827	HAUK, GERHARD	
	Examiner	Art Unit	
	ROBERT VETERE	1792	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *16 November 2009*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-19* is/are pending in the application.

4a) Of the above claim(s) *12-18* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-11,19* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Examiner's Comments

An amendment, amending claim 7, was received and entered on 11/16/2009. Claims 12-18 remain withdrawn pursuant to an election made on 4/20/2009.

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1-11 and 19 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 1 states "applying a liquid to a that...." Based on the language of claim 1 previously presented and the fact that claim 1 is indicated as "previously presented," the examiner is treating this claim as if it instead states "applying a liquid to a solid that...."

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-3 and 6 are rejected under 35 U.S.C. 102(b) as being anticipated by Motoyama et al. (EP0179943).

Claims 1-3: Motoyama teaches a method of treating particles with a fluid comprising the steps of: introducing particles into a counter flow fluidized bed jet mill (p. 13; p. 14); injecting a coating solution into the mill via a nozzle (claimed finely divided liquid) (p. 14) and milling the particles in the presence of the fluid whereby the particles are coated with the fluid (p. 14). Motoyama further teaches that the liquid feed rate is controlled by a pump (p. 9). While Motoyama does not expressly state that the ratio of solid to liquid is controlled, it is implicit in this disclosure that the ratio is controlled because Motoyama teaches that the liquid feed rate is controlled by the pump.

Claim 6: Motoyama also teaches that the particles to be treated are a powdered material with an active ingredient (claimed read—formulated active ingredient mixture) (p. 5).

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

6. Claims 1-3 and 6-11 rejected under 35 U.S.C. 103(a) as being unpatentable over Albert et al. (US 3,920,442) in light of Motoyama.

Claims 1-3, 6-7: Albert teaches a method of treating pesticide particles in a fluidized bed with a liquid (4:24-61). Albert further teaches that the method also comprises the step of milling the particles and exposing the particles to an atomized spray of the liquid coating material (10:17-41). Albert, however, fails to expressly teach that the milling is performed in the presence of the liquid. However, as discussed above, Motoyama teaches a method of coating particles comprising an active ingredient in a fluidized bed jet mill wherein the particles are milled in the presence of the coating liquid. The selection of a known material based on its suitability for its intended use supported a prima facie obviousness determination in *Sinclair & Carroll Co. v. Interchemical Corp.*, 325 U.S. 327, 65 USPQ 297 (1945). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have milled the particles in the presence of the liquid in the method of Albert with the predictable expectation of success.

Claims 8-9: Albert further teaches that the particles are 44-150 μm (11:17-22). In the case where the claimed ranges overlap or lie inside ranges disclosed by the prior art" a prima facie case of obviousness exists. In re Wertheim, 541 F.2d 257, 191 USPQ 90 (CCPA 1976). Thus, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have selected particles within applicant's claimed range in the method of Albert with the predictable expectation of success.

Claim 10: Albert also teaches that the liquid coating material is a surface active substance (10:36-41).

Claim 11: Albert also teaches that the amount of liquid applied is 11.04% by weight of the total pesticide powder (12:1-7).

7. Claims 4-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Albert and Motoyama in light of Conte et al. (US 5,476,654).

Claims 4-5: Albert teaches that the pesticide particles are coated with a surface active agent which makes the particles more water-soluble (5:57-68), but fails to teach that the particles are treated in a hammer or impact mill. Conte teaches a method of treating pesticide particles with a liquid which improves their water solubility (1:13-21) and further teaches that a hammer mill may be used in the place of a fluidized bed jet mill when treating the particles (3:26-31) (a hammer mill is a type of impact mill). The selection of a known material based on its suitability for its intended use supported a prima facie obviousness determination in *Sinclair & Carroll Co. v. Interchemical Corp.*, 325 U.S. 327, 65 USPQ 297 (1945). Thus, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have substituted the fluidized jet mill in the combined method of Albert and Motoyama with a hammer mill, as taught by Conte, with the predictable expectation of success.

8. Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Albert and Motoyama in light of Nakamura (US 6,468,555).

Claim 19: Albert teaches that the pesticide particle may be methomyl (see, e.g., claim 14), but fails to teach that thiamethoxam is used. Nakamura, however, teaches that thiamethoxam can be used interchangeably with methomyl (5:1-30) in applications where the pesticide particle is made into a wettable powder (5:31-47). The selection of a known material based on its suitability for its intended use supported a prima facie obviousness determination in *Sinclair & Carroll Co. v. Interchemical Corp.*, 325 U.S. 327, 65 USPQ 297 (1945). Thus, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have selected thiamethoxam instead of methomyl as the pesticide powder in the combined method of Albert and Motoyama with the predictable expectation of success.

Response to Arguments

9. Applicant's arguments filed 11/16/2009 have been fully considered but they are not persuasive.

Applicant first argues that Motoyama does not teach controlling the ratio of solid to liquid. This is not persuasive. Motoyama teaches that the liquid feed rate is controlled by a pump (i.e. regulating unit) and, therefore, teaches that the ratio of solid to liquid is controlled.

Applicant next argues that Albert does not teach a process for finely milling solid particles in the presence of a liquid. This is not persuasive. Albert teaches that the particles are milled in the presence of an atomized spray of the liquid coating material (i.e. finely divided liquid).

Applicant also argues, by presenting photos, that the claimed process provides unexpected performance characteristics. This is not persuasive. There is not indication that these photos are commensurate in scope with the claims. Applicant's description of the methods which are depicted in these photos is too general to provide any meaningful insight into whether the alleged unexpected results are caused by applicant's claimed invention.

Conclusion

10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ROBERT VETERE whose telephone number is (571)270-1864. The examiner can normally be reached on Mon-Fri 9-6.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Cleveland can be reached on 571-272-1418. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Robert Vetere/
Examiner, Art Unit 1792

/Michael Cleveland/

Supervisory Patent Examiner, Art Unit 1792